

Message Text

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ORIGIN DOE-12

INFO OCT-01 EUR-12 EA-10 ISO-00 ACDA-12 CIAE-00 INR-07
IO-13 L-03 NSAE-00 NSC-05 EB-08 NRC-05 OES-07
SOE-01 DODE-00 SS-15 SP-02 PM-05 OIC-02 /120 R

DRAFTED BY USDOE:IA:BMCFADDEN:TDT
APPROVED BY L/N:BWTT UER
USDOE:IA:RSLAWSON (DRAFT)
ACDA - HRMARSHALL
NRC - MR. PETERSON (DRAFT)
OES/NET - DEMING (DRAFT)
T/D - NYE (NFO)
PM/NPP - OPLINGER (INFO)
S/AS - KELLEY (INFO)
IO/SCT - JILLSON (INFO)

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FM SECSTATE WASHDC
TO AMCONSUL VIENNA PRIORITY
INFO AMEMBASSY KUALA LUMPUR

C O N F I D E N T I A L STATE 304215

PASS TO USIAEA

E.O. 11652: GDS

TAGS: IAEA, TECH, PARM, MY

SUBJECT: DRAFT AGREEMENT ON TRANSFER OF RESEARCH REACTOR
AND FUEL TO MALAYSIA THROUGH IAEA

REF: (A) VIENNA 10390, (B) STATE 278636

1. THIS RESPONDS TO AGENCY'S PROPOSED CHANGES (TRANS-
MITTED REF A) IN SUBJECT DRAFT AGREEMENT. MOST CHANGES
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ARE ACCEPTABLE. IN A FEW CASES, HOWEVER, SUGGESTED
CHANGES WOULD RESULT IN INCONSISTENCY WITH REQUIREMENTS
OF EXISTING US LAW, ANTICIPATED LEGISLATION, AND/OR
CURRENT US NUCLEAR EXPORT POLICIES. GABBERT HAS
ASSISTED IN DEVELOPING APPROACHES AND LANGUAGE PROPOSED
IN PARA 9 AND 10 BELOW. MISSION REQUESTED INFORM AGENCY
AND MALAYSIA OF US RESPONSES AND PROPOSED CHANGES AND

ADVISE.

2. WE ACCEPT CHANGES PROPOSED IN REF A PARAS 1 THROUGH 4, 6 THROUGH 10, 13,15, 17 THROUGH 19, 22 AND 24.

3. AT END OF SECOND PREAMBULAR CLAUSE, REQUEST ADDITION OF QUOTE (HEREINAFTER CALLED THE QUOTE TREATY AGREEMENT

UNQUOTE) UNQUOTE. THIS WILL SIMPLIFY FUTURE REFERENCES IN AGREEMENT.

4. REF A PARA 5: WE CAN CCEPT NE PARAGRAPH 2 TN ARTICLE 1, BUT WITH DELEGATION OF QUOTE MUTATIS MUTANDIS UNQUOTE. (ALTHOUGH US FAVORED INCLUSION OF THIS PHRASE AT TIME DRAFT AGREEMENT WAS BEING DEVELOPED ON PROPOSED TRANSFER OF OREGON STATE UNIVERSITY REACTOR TO MEXICO, WE HAVE CONCLUDED ON FURTHER CONSIDERATION THAT THIS PHRASE IS INAPPROPRIATE. EFFECT OF THIS PHRASE COULD BE ARGUED TO DEPRIVE USG OF ITS RIGHTS, PARTICULARLY IN RELATION TO ANY NON-U.S. ASSISTANCE FOR PROJECT.)

5. REF A PARA 11: IN ACCORDANCE WITH MASTER SUPPLY AGREEMENT CONCLUDED BY U.S. AND AGENCY IN JUNE 1974 (INFCIRC/210), THE SUPPLY OF SNM PLANNED FOR MALAYSIAN PROJECT REQUIRES CONCLUSION OF A SUPPLEMENTAL CONTRACT. SUCH CONTRACT WILL MAKE THIS SNM SUPPLY SUBJECT TO ALL CONFIDENTIAL

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TERMS AND PROVISIONS OF MASTER AGREEMENT, INCLUDING BOTH THOSE COVERED IN AGENCY'S PROPOSED NEW PARAS 2 AND 3 OF ARTICLE 5 AND ALSO SEVERAL OTHER PROVISIONS REQUIRED BY U.S. LAW (E.G., INFCIRC/210 PARAS 2, 3, 5, 6, 13). THEREFORE STIPULATION FOR SUPPLEMENTAL CONTRACT SHOULD BE RETAINED, ALTHOUGH WE NOW REALIZE THAT IT SHOULD BE INSERTED IN ARTICLE 3, THAT THERE SHOULD BE A PREAMBULAR REFERENCE TO THE MASTER AGREEMENT, AND THAT CERTAIN OTHER MINOR CHANGES ARE NEEDED IN LIGHT OF PROVISIONS OF MASTER AGREEMENT AND SUPPLEMENTAL CONT ACT. ACCORDING- LY, PLEASE INSERT FOLLOWING NEW SIXTH PREAMBULAR CLAUSE QUOTE WHEREAS, PURSUANT TO THE TERMS OF THE COOPERATION AGREEMENT, THE AGENCY AND THE UNITED STATES ON 14 JUNE 1974 CONCLUDED A MASTER AGREEMENT GOVERNING SALES OF SOURCE, BY-PRODUCT AND SPECIAL NUCLEAR MATERIALS FOR RESEARCH PURPOSES (HEREINAFTER CALLED THE QUOTE MASTER AGREEMENT UNQUOTE); UNQUOTE. IN ARTICLE 3.2, PLACE A COMMA AFTER QUOTE LICENSES OR PERMITS UNQUOTE, REMOVE QUOTE AND TO UNQUOTE AND AFTER QUOTE LICENSES AND PERMITS, UNQUOTE ADD THE FOLLOWING PHRASE QUOTE AND THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT UNQUOTE. REPLACE ARTICLE 3.3, WHOSE CONTENT IS COVERED BY PROVISIONS OF THE

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MASTER AGREEMENT AND THE SUPPLEMENTAL CONTRACT, WITH THE FOLLOWING QUOTE THE PARTICULAR TERMS AND CONDITIONS FOR THE TRANSFER OF THE SUPPLIED MATERIALS, INCLUDING CHARGES, A SCHEDULE OF DELIVERIES AND SHIPPING INSTRUCTIONS, SHALL BE SPECIFIED IN A SUPPLEMENTAL CONTRACT TO THE MASTER AGREEMENT TO BE CONCLUDED BY THE AGENCY, MALAYSIA, AND THE UNITED STATES (HEREINAFTER CALLED THE QUOTE SUPPLEMENTAL CONTRACT UNQUOTE) IN IMPLEMENTATION OF THIS AGREEMENT. UNQUOTE. ARTICLE 5.2 WILL NOW READ "MALAYSIA SHALL PAY THE UNITED STATES ALL CHARGES FOR OR CONNECTED WITH THE

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SUPPLIED MATERIAL IN ACCORDANCE WITH THE PROVISIONS OF THE SUPPLEMENTAL CONTRACT." (WE HAVE DECIDED THAT MENTION OF DEPT OF ENERGY IS UNNECESSARY.) GABBERT SUGGESTS MALAYSIA BE GIVEN COPY OF INFCIRC/210 AND BE SHOWN BLANK COPY OF RECENT SUPPLEMENTAL CONTRACT ON SUPPLY OF MATERIAL TO GREECE DELETING REFERENCES; OAMOUNT AND TYPE OF NUCLEAR MATERIAL INVOLVED AND REFERENCES TO EXCHANGE OF NOTES.

6. REF A PARA 12: CHANGES ARE ACCEPTED EXCEPT THAT THE ARTICLE 5 PARA IN QUESTION HERE WILL STILL BE PARA 4 (INSTEAD OF 5), AND LAST SENTENCE OF THIS PARA WILL STILL REFER TO PAYMENTS PROVIDED FOR IN PARA 2 (INSTEAD OF PARAS 2 AND 3).

7. SECOND CLAUSE OF ARTICLE 6 FIRST SENTENCE, BEGINNING "AND AFTER EXPORT FROM THE U.S.", SHOULD BE DELETED AS IT IS INCONSISTENT WITH PROVISIONS OF SUPPLEMENTAL AGREEMENT.

7(A). REF(A), PARA 14 AND 20: BECAUSE THIS AGREEMENT CONTAINS MANY OF CHARACTERISTICS OF AN AGREEMENT FOR COOPERATION, IT IS APPROPRIATE TO USE TERM "GUARANTEES" THROUGHOUT TO PARALLEL LANGUAGE IN U.S. LEGISLATION. IF AGENCY FEELS STRONGLY THAT TERM "UNDERTAKES" SHOULD BE USED, MISSION AUTHORIZED TO ACCEPT SUCH USAGE.

8. REF A PARA 16: WE RECOGNIZE AGENCY'S CONCERN FOR NEED TO AVOID APPEARING TO RELINQUISH BOARD'S AUTHORITY, AND WE HAVE GIVEN CAREFUL CONSIDERATION TO MISSION'S RECOMMENDATION TO ACCEPT AGENCY VERSION OF BEGINNING OF PARA 6 OF ARTICLE 7 AND TO RELY ON PROVISIONS OF NOTES FOR BILATERAL SAFEGUARDS RIGHTS. HOWEVER, WE BELIEVE THAT THIS INCONSISTENCY BETWEEN CORRESPONDING PROVISIONS OF NOTES AND SUPPLY PROJECT AGREEMENT IS UNDESIRABLE. FURTHERMORE, IN VIEW OF
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CONCERNS EXPRESSED HERE ABOUT LACK OF BACKUP US SAFEGUARDS RIGHTS ON MATERIALS AND/OR EQUIPMENT TRANSFERRED THROUGH IAEA IN THE PAST, BELIEVE EXECUTIVE BRANCH MIGHT BE SUBJECT TO SERIOUS CRITICISM, WHICH COULD BE HARMFUL TO OUR COOPERATION WITH AGENCY, IF WE CONCURRED IN A FORMULATION WHICH (IF A BOARD DETERMINATION WERE TO BE DELAYED FOR ANY

REASON) COULD SEEM TO INHIBIT US FROM APPLYING TIMELY SAFEGUARDS IN THE EXTREMELY UNLIKELY, HYPOTHETICAL EVENT THAT AGENCY COULD NOT APPLY SAFEGUARDS. WHILE ANY SUCH DEVELOPMENT WITH RESPECT TO PLANNED TRANSFERS TO MALAYSIA IN PARTICULAR MAY SEEM INCONCEIVABLE, THIS AGREEMENT WILL SET PRECEDENT FOR OTHER TRANSFERS THROUGH IAEA IN THE FUTURE; THEREFORE, PROVISIONS OF THIS AGREEMENT MUST ASSURE THAT U.S. WOULD HAVE THE RIGHT TO EXERCISE ITS SAFEGUARDS RIGHTS WITHOUT DELAY IF CIRCUMSTANCES WARRANTED.

9. WE PROPOSE THE FOLLOWING REVISION, WHICH WE HOPE WILL MEET AGENCY'S CONCERNS. REVERSE POSITIONS OF ARTICLE 7 PARAS 6 AND 7, SO THAT FORMER 6 BECOMES NEW 7 AND VICE VERSA. INSERT QUOTE (HEREINAFTER CALLED THE QUOTE BOARD UNQUOTE) UNQUOTE AFTER QUOTE OF THE AGENCY UNQUOTE IN NEW PARA 6. REVISE NEW PARA 7 TO READ AS FOLLOWS QUOTE IN THE EVENT THAT THE AGENCY IS FOR ANY REASON UNABLE TO APPLY SAFEGUARDS TO THE PROJECT UNDER THE TREATY AGREEMENT OR UNDER SUCH OTHER ARRANGEMENTS AS MAY BE MADE FOR THE IMPLEMENTATION OF THE AGENCY'S RIGHTS AND RESPONSIBILITIES REFERRED TO IN PARA 4 OF THIS ARTICLE, MALAYSIA AND THE UNITED STATES, FOLLOWING CONSULTATIONS WITH THE AGENCY, SHALL IMPLEMENT FORTHWITH MEASURES TO VERIFY COMPLIANCE WITH THE UNDERTAKING SET FORTH IN PARA 1 OF THIS ARTICLE. UNQUOTE. WITH RESPECT

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TO THE OPENING CLAUSE PROPOSED FOR THIS NEW PARA 7, WE RECALL THAT WHEN SIMILAR FORMULATION WAS PROPOSED IN CONNECTION WITH MEXICAN DRAFT AGREEMENT, AGENCY EXPRESSED VIEW THAT STATEMENT WAS NECESSARY INDICATING NEED FOR BOARD DETERMINATION THAT AGENCY WAS UNABLE TO APPLY SAFEGUARDS. WE DO NOT REPEAT NOT BELIEVE INCLUSION OF SUCH STATEMENT IN THIS AGREEMENT IS MANDATED BY STATUTE.

IN ANY EVENT, WE PROPOSE ALLOWING AGENCY TO MAINTAIN ITS POSITION ON BOARD ROLE AND NOT REFERRING TO U.S. ROLE. THUS, WE HOPE THAT AGENCY CAN ACCEPT OUR PROPOSAL HERE. NOTE THAT OUR REVISION ELIMINATES FORMER PARA 6.A. THERE SEEMS NO NEED TO SPECIFY AGENCY'S RIGHT TO CALL FOR RETURN OF SUPPLIED ITEMS, AS THIS RIGHT IS COVERED IN ARTICLE 12.C OF THE STATUTE. U.S. RIGHT TO CALL FOR RETURN WILL BE COVERED EITHER IN NOTES OR IN PROPOSED NEW ARTICLE IN AGREEMENT. (SEE NEXT PARAGRAPH.) AGREEMENT, IT WOULD BE NEW ARTICLE, WITH SUCCEEDING ARTICLES, RENUMBERED ACCORDINGLY. (IF INCORPORATION IN AGREEMENT IS UNACCEPTABLE TO AGENCY, WE AGREE TO RETENTION OF PROVISIONS IN NOTES.) FOLLOWING IS PROPOSED LANGUAGE: QUOTE ARTICLE 7. BIS. IN THE EVENT THAT MALAYSIA, AT ANY TIME FOLLOWING THE ENTRY INTO FORCE OF THIS AGREEMENT:

A. DOES NOT COMPLY WITH THE PROVISIONS OF ARTICLE 7 OR ARTICLE 12 OF THIS AGREEMENT;

B. DOES NOT ACCEPT SAFEGUARDS AS PROVIDED FOR BY THE TREATY AGREEMENT;

C. DETONATES A NUCLEAR EXPLOSIVE DEVICE, TERMINATES OR ABROGATES IAEA SAFEGUARDS, OR MATERIALLY VIOLATES AN IAEA SAFEGUARDS AGREEMENT;

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D. ENGAGES IN, OR ASSISTS, ENCOURAGES, OR INDUCES ANY NON-NUCLEAR-WEAPON STATE TO ENGAGE IN, ACTIVITY INVOLVING SOURCE OR SPECIAL FISSIONABLE MATERIAL AND HAVING DIRECT SIGNIFICANCE FOR THE MANUFACTURE OF NUCLEAR EXPLOSIVE DEVICES; OR

E. ENTERS INTO AN AGREEMENT FOR THE TRANSFER OF REPROCESSING EQUIPMENT, MATERIALS OR TECHNOLOGY TO ITS SOVEREIGN CONTROL OR TO THE SOVEREIGN CONTROL OF A NON-NUCLEAR-WEAPON STATE EXCEPT IN CONNECTION WITH AN INTERNATIONAL FUEL CYCLE EVALUATION IN WHICH THAT STATE, MALAYSIA AND THE UNITED STATES PARTICIPATE, OR PURSUANT TO ANY OTHER RELEVANT INTERNATIONAL AGREEMENT OR UNDERTAKING TO WHICH SUCH STATES SUBSCRIBE,

THE UNITED STATES SHALL HAVE THE RIGHT TO BE DISCHARGED OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND SHALL HAVE THE RIGHT TO REQUIRE THE RETURN OF THE SUPPLIED REACTOR, THE SUPPLIED MATERIALS, AND ANY OTHER NUCLEAR MATERIAL REFERRED TO IN PARA L, OF ARTICLE 7 OF THIS AGREEMENT. UNQUOTE. NOTE THAT FOREGOING ARTICLE 7 BIS.B IS AN ADDITIONAL SANCTIONS CONDITION, NOT INCLUDED IN DRAFT NOTE TEXT WE FIRST PROPOSED. IT IS INCLUDED TO REFLECT U.S. FULL-SCOPE

SAFEGUARDS REQUIREMENT AND IN RECOGNITION OF FACT THAT IF A STATE WITHDREW FROM NPT, ITS NPT SAFEGUARDS AGREEMENT COULD TERMINATE LEGALLY AND NEW PROJECTS IN ITS CIVIL NUCLEAR PROGRAM WOULD NO LONGER BE SUBJECT TO IAEA SAFEGUARDS.

11. AS STATED ABOVE, IF AGENCY UNWILLING INCLUDE PROPOSED NEW ARTICLE IN AGREEMENT TEXT, RETENTION OF THESE PROVISIONS IN NOTES IS ACCEPTABLE TO U.S. IN THAT CASE, WE WOULD PROPOSE USING ABOVE LANGUAGE INSTEAD OF TEXT

PROPOSED REF B. IT WOULD REPLACE ALL PARAS IN REF B NOTE TEXT FROM AND INCLUDING PARA BEGINNING QUOTE IN THE EVENT OF NON-COMPLIANCE WITH THE PROVISIONS OF ARTICLES 7 OR 12
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OF THE AGREEMENT UNQUOTE THROUGH THE PARA IMMEDIATELY PRECEDING PARA WHICH STARTS QUOTE IN THE EVENT THAT THE U.S. EXERCISES ITS RIGHTS UNQUOTE. SENTENCE PROVIDING FOR REPORTING TO U.S. ON INVENTORIES, WHICH IMMEDIATELY PRECEDED THE PARAS NOW REPLACED, HAS BEEN DELETED IN VIEW INCORPORATION OF THIS PROVISION IN AGREEMENT PER REF A PARA 17.

12. REF A PARA 21: SINCE DISPATCH OF REF B, WE HAVE REALIZED THAT PARA 2 OF ARTICLE 12 OF DRAFT TRILATERAL AGREEMENT AS TRANSMITTED DIFFERS FROM LATEST VERSION OF CORRESPONDING PROVISION DEVELOPED FOR U.S. DRAFT MODEL BILATERAL NUCLEAR COOPERATION AGREEMENT. WE CONSIDER IT IMPORTANT TO USE LANGUAGE OF MODEL AGREEMENT INsofar AS POSSIBLE, FOR THIS IS EXPECTED TO FACILITATE EXPORT LICENSING PROCESS FOR REACTOR AND FUEL. HOWEVER, WHERE APPROPRIATE, WE HAVE INCORPORATED CHANGES REQUESTED BY AGENCY IN PREVIOUS WORDING. DESIRED LANGUAGE IS NOW AS FOLLOWS: QUOTE THE PARTIES AGREE TO THE LEVELS FOR THE APPLICATION OF PHYSICAL PROTECTION SET FORTH IN ANNEX B TO THIS AGREEMENT, WHICH LEVELS MAY BE MODIFIED BY MUTUAL CONSENT OF THE PARTIES WITHOUT AMENDMENT OF THIS AGREEMENT. MALAYSIA SHALL MAINTAIN ADEQUATE PHYSICAL PROTECTION MEASURES IN ACCORDANCE WITH SUCH LEVELS. THESE MEASURES SHALL AS A MINIMUM PROVIDE PROTECTION COMPARABLE TO THAT SET FORTH IN AGENCY DOCUMENT INFCIRC/225/REV. 1, ENTITLED "THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL", AS IT MAY BE REVISED FROM TIME TO TIME UNQUOTE. CHANGES PROPOSED IN PARA 3 OF ARTICLE 12 ARE ACCEPTABLE. IN ADDITION, INSERT AFTER QUOTE SHALL BE MAINTAINED UNQUOTE, IN PARA 1 OF THIS ARTICLE, THE FOLLOWING PHRASE QUOTE IN ACCORDANCE WITH PARA 2 OF THIS ARTICLE UNQUOTE.

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13. REF A PARA 23: WITH RESPECT TO PARA 2 OF ARTICLE 14, WE RECOGNIZE THAT SINCE AGREEMENT NOT IN FORCE FOR LIMITED NUMBER OF YEARS THAT IT CANNOT "EXPIRE". BUT FEEL STRONGLY THAT LANGUAGE CONCERNING TERMINATION OR SUSPENSION OF AGREEMENT IMPORTANT TO CLEARLY ESTABLISH SURVIVABILITY OF ARTICLES VII, VII BIS, VIII, IX, XI, AND XII IN UNLIKELY EVENT AGREEMENT NO LONGER IN FORCE. ACCORDINGLY, PARA 2 OF THIS ARTICLE SHOULD BEGIN: QUOTE NOTWITHSTANDING THE SUSPENSION OR TERMINATION OF THIS AGREEMENT OR ANY COOPERATION HEREUNDER FOR ANY REASON UNQUOTE.

14. REF A PARA 25, REGARDING ANNEX B: CHANGES ACCEPTABLE EXCEPT PROPOSED TWO SHIFTS OF PHRASE QUOTE IN CASE OF

INTERNATIONAL TRANSPORT UNQUOTE. WE RECOGNIZE THAT PROPOSED SHIFTS COULD BE REGARDED AS EDITORIAL IMPROVEMENT, BUT THEY DO NOT APPEAR NECESSARY AND WE PREFER TO RETAIN ORIGINAL LANGUAGE.

15. REF A PARA 26A: MISSION ASSUMPTION CORRECT THAT ONLY THOSE PROVISIONS IN DRAFT NOTE NUMBERED PARAS 1, 2, AND 3 (I.E., THROUGH SUBPARA 3.D, AFTER WHICH THERE SHOULD BE A PERIOD) ARE DEPENDENT ON CIRCUMSTANCES DEMONSTRATING IAEA UNABLE TO APPLY SAFEGUARDS. TO CORRECT ANY UNCERTAINTY, REVISE END OF INTRODUCTORY PARA TO READ QUOTE THE PROVISION OF NUMBERED PARAS 1, 2 AND 3 SHALL APPLY UNQUOTE. IF SANCTIONS PROVISIONS ARE TO BE IN TRILATERAL, REMOVE THEM FROM NOTES AND PUT IN THEIR PLACE THE FOLLOWING SENTENCE: QUOTE IN THE EVENT OF NON-COMPLIANCE WITH THE PROVISIONS OF THIS NOTE, THE UNITED STATES SHALL HAVE THE RIGHT TO REQUIRE THE RETURN OF ANY MATERIAL AND EQUIPMENT SUBJECT TO THE AGREEMENT. UNQUOTE. (THIS STIPULATION WAS IN SECTION DELETED IN LIGHT OF CONSOLIDATION OF SANCTIONS CONDITIONS, BUT IT IS NOT COVERED IN THE CONSOLIDATED WORDING.). IF AGENCY AGREES TO INCLUDING PROPOSED ARTICLE 7.BIS IN AGREEMENT, CONFIDENTIAL

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THEN DRAFT NOTES PROVISION ON SANCTIONS WOULD BE DELETED. IN PARA CONCERNING PAYMENT, IF RIGHT OF RETURN EXERCISED, BEGINNING WOULD BE MODIFIED BY INSERTING QUOTE OR ARTICLE 7 BIS UNQUOTE AFTER QUOTE PARA 6 OF ARTICLE VII UNQUOTE.

16. IN PARA 1 OF NOTE, CHANGE TO REA8 QUOTE AS PRO-

VIDED FOR BY THE TREATY AGREEMENT OR UNDER OTHER UNQUOTE,
ALSO, IN SUBPARA 1. (II), CHANGE QUOTE ARE UNQUOTE TO
QUOTE IS UNQUOTE IN BOTH PLACES.

17. ADD FOLLOWING TO PARA 2 OF NOTE QUOTE (H) OTHER
SYSTEMS OF MEASUREMENT, CONTAINMENT, AND SURVEILLANCE
AS ARE NECESSARY TO FACILITATE THE APPLICATION OF
SAFEGUARDS.UNQUOTE

18. REF A PARA 26B: TO ELIMINATE POSSIBLE AMBIGUITY
NOTED BY MISSION, CHANGE QUOTE THIS AGREEMENT UNQUOTE,
WHEREVER IT OCCURS IN DRAFT NOTE, TO QUOTE THE AGREE-
MENT UNQUOTE.

19. REF A PARA 26C: RE MISSION QUESTION AS TO NEED
FOR DRAFT NOTE PROVISION NOW DESIGNATED ARTICLE 7.BIS.C
OF AGREEMENT OR PARA 3.C OF NOTE. WITHOUT PROPOSED
NEW ARTICLE 7.BIS, UNDERTAKINGS AND SANCTIONS IN THE
AGREEMENT RELATE ONLY TO COMPLIANCE WITH PROVISIONS OF

THIS PARTICULAR AGREEMENT AND THE USE OF MATERIAL/EQUIP-
MENT PROVIDED BY U.S. THEREUNDER. HOWEVER, ARTICLE 7.BIS.
C (OR NOTE PARA) CONCERNS DETONATION OF ANY NUCLEAR
EXPLOSIVE DEVICE REGARDLESS OF ORIGIN OF NUCLEAR
MATERIAL/EQUIPMENT UTILIZED, TERMINATION/ABROGATION OF
IAEA SAFEGUARDS UNDER ANY AGREEMENT, AND VIOLATION OF
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ANY IAEA SAFEGUARDS AGREEMENT. ANTICIPATED LEGISLATION
WILL REQUIRE ALL NUCLEAR EXPORTS TO BE SUBJECT TO THESE
AND THE OTHER CONDITIONS INDICATED.

20. REF A PARA 26D: SANCTIONS CONDITION RELATING TO
REPROCESSING, WHICH NEW LEGISLATION IS EXPECTED TO
ESTABLISH WITH RESPECT TO ALL FUTURE U.S. NUCLEAR COOPERA-
TION INVOLVING TRANSFERS OF REACTORS OR SPECIAL NUCLEAR
MATERIAL, USES LANGUAGE OF ANTICIPATED LEGISLATION, AND
WE BELIEVE THE INTENT IS CLEAR.

21. REF A PARA 26E: WE UNDERSTAND MALAYSIA'S ATTITUDE
TOWARD ENTERING INTO BILATERAL AGREEMENT FOR COOPERATION
WITH U.S. AT THIS TIME. WHILE LANGUAGE WE PROPOSED IS
DESIRABLE WE COULD ACCEPT CHANGING LAST SENTENCE OF NOTE
TO READ QUOTE I WOULD APPRECIATE IT IF YOUR EXCELLENCY
WOULD CONFIRM THE FOREGOING UNDERSTANDINGS. UNQUOTE.
USG WOULD, OF COURSE, STILL TREAT EXCHANGE OF NOTES AS
AN INTERNATIONAL AGREEMENT.

22. REF A PARA 27: SINCE EXECUTIVE BRANCH AND NUCLEAR
REGULATORY COMMISSION MUST BE PREPARED TO JUSTIFY ANY

NUCLEAR EXPORTS IN RESPONSE TO INQUIRIES FROM CONGRESS,
PRESS, PUBLIC INTEREST GROUPS, ETC., KEEPING NOTES
CONFIDENTIAL DOES NOT APPEAR FEASIBLE. MISSION SHOULD
EMPHASIZE TO MALAYSIA THAT THE CONDITIONS SET FORTH
IN THE AGREEMENT AND THE DRAFT NOTES ARE EXPECTED TO BE
REQUIRED WITH RESPECT TO ALL FUTURE U.S. NUCLEAR EXPORT
ARRANGEMENTS WHETHER THROUGH IAEA OR UNDER BILATERAL
AGREEMENTS FOR COOPERATION WITH RECIPIENT NATIONS. IN
RESPONSE TO MALAYSIAN QUERY ABOUT POSSIBLY SUBMITTING
AGREEMENT TO FEBRUARY MEETING OF BOARD OF GOVERNORS
BUT THEN DEFERRING SIGNATURE AND EXCHANGE OF NOTES,
MISSION SHOULD STATE THAT ONCE ACCORD IS REACHED ON TEXTS
OF AGREEMENT AND NOTE EXCHANGE, U.S. WILL BE QUITE PRE-
PARED, IF MALAYSIA WISHES, TO SUBMIT AGREEMENT TO BOARD
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AND TO DEFER SIGNATURE OF AGREEMENT AND EXCHANGE OF
NOTES UNTIL MUTUALLY AGREEABLE TIME. MISSION SHOULD
POINT OUT, HOWEVER, THAT REACTOR/FUEL EXPORT LICENSE
APPLICATIONS COULD NOT BE PROCESSED UNTIL AGREEMENT AND
NOTES ARE IN EFFECT. IN RESPONSE TO MALAYSIAN INQUIRY
ABOUT STATUS OF U.S.-IAEA NEGOTIATIONS REQUIRED BY ANTI-
CIPATED LEGISLATION, MISSION SHOULD STATE THAT U.S. AND

IAEA HAVE AGREED TO ENGAGE IN NEGOTIATIONS AND THAT
THESE NEGOTIATIONS ARE EXPECTED TO START IN NEAR
FUTURE.

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